

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

INTERNATIONAL-MATEX TANK
TERMINALS-ILLINOIS, a Delaware general
partnership

Plaintiff,

Case No. 1:08-cv-01200-PLM

v.

Hon. Paul L. Maloney

CHEMICAL BANK, a Michigan state-
chartered bank

Mag. Joseph G. Scoville

Defendant.

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**PLAINTIFF IMTT'S MOTION FOR LEAVE TO FILE A
SUR-REPLY IN SUPPORT OF IMTT'S MOTION FOR SUMMARY
JUDGMENT ON COUNTS I AND II OF THE COMPLAINT**

Plaintiff International-Matex Tank Terminals-Illinois ("IMTT"), by its attorneys, pursuant to Rule 7.2(c) of the Local Rules of Practice and Procedure for the United States District Court for the Western District of Michigan, moves this Court for Leave to File a Sur-reply in Support of IMTT's Motion for Summary Judgment on Counts I and II of the Complaint. In support of this Motion, IMTT states as follows:

1. IMTT filed its Motion and Brief in Support of its Motion for Summary Judgment on Counts I and II of the Complaint on March 16, 2009.

2. Defendant Chemical Bank (“Chemical Bank”) failed to file a response to IMTT’s Motion for Summary Judgment within twenty-eight days as required by Local Rule 7.2(c).

3. Chemical Bank did, however, file a Cross-Motion and Brief in Support of Motion for Summary Judgment on Counts I and II of the Complaint on April 6, 2009.

4. Because Chemical Bank never filed a response to IMTT’s Motion for Summary Judgment, IMTT filed a timely Combined Response to Chemical Bank’s Motion for Summary Judgment and Reply in Support of IMTT’s Motion for Summary Judgment on May 4, 2009.

5. Chemical Bank then filed a Reply in Support of its Motion for Summary Judgment on May 19, 2009.

6. In its Reply Brief, Chemical Bank raises new issues that were never addressed in its previously-filed brief. Specifically, Chemical Bank, for the first time, accuses IMTT of “asking Chemical Bank to commit fraud.” This is a serious accusation that is unsupported by the law or facts and IMTT should be allowed to respond.

7. IMTT has drafted a Sur-reply and has attached that brief hereto as Exhibit A.

8. In the interest of justice, IMTT requests that this Court grant leave to IMTT to file the attached Sur-reply *instanter*.

WHEREFORE, Plaintiff IMTT respectfully moves this Honorable Court to grant leave to IMTT to file the attached Sur-reply *instanter*, and enter whatever further relief this Court deems just and appropriate.

Dated: June 5, 2009.

Respectfully submitted,

INTERNATIONAL-MATEX TANK
TERMINALS-ILLINOIS

By: s/Brian P. O'Meara
One of Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFF IMTT'S MOTION FOR LEAVE TO FILE A SUR-REPLY IN SUPPORT OF IMTT'S MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II OF THE COMPLAINT** with the Clerk of the Court using the CM/ECF system on this the 5th day of June, 2009, which constitutes service on below counsel, a registered electronic filing user, pursuant to Fed. R. Civ. P. 5(b)(2)(D) and W.D. Mich. LCivR 5.7(i).

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s/ Brian P. O'Meara